IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

Crl.MC.No. 3608 of 2006(A)

PETITIONER:

SIBY JOSEPH,
ONASSERY HOUSE, MANNANAM KARA, ATHIRAMPUZHA.

BY ADV. SRI.TOMY SEBASTIAN
SRI.RAJESH PALAMATTAM
SRI.SAJEEVAN KURUKKUTTIYULLATHIL

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE
GOVERNMENT, THIRUVANANTHAPURAM.

2. THE REVENUE DIVISIONAL OFFICER,
REVENUE DIVISIONAL OFFICE, THIRUNAKKARA,KOTTAYAM.

3. THE PRINCIPAL,
MEDICAL COLLEGE, GANDHI NAGAR P.O., KOTTAYAM.

4. THE DIRECTOR,
ICH HOSPITAL, KOTTAYAM.

BY PUBLIC PROSECUTOR ADV. SRI. GIKKU JACOB FOR R1 & R2

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3608 of 2006

Dated this the 7th day of February, 2007

ORDER

The short grievance of the petitioner is that Annexure-C order is attempted to be reviewed by the 2nd respondent, the Revenue Divisional Officer, Kottayam. According to the petitioner, Annexure-C order must be reckoned as an order passed under Chapter XB of the Code of Criminal Procedure and in these circumstances, the Sub Divisional Magistrate has no jurisdiction to review his own order at the instance of the 3rd respondent.

2. I have been taken through Annexure-C order. I have been taken through the statement filed by the 2nd respondent, Revenue Divisional Officer. The Revenue Divisional Officer, in para.6 of the counter statement asserts that no action under Chapter XB Cr.P.C has been initiated. That order is not an order passed under Section 133 or 142 or 147 Cr.P.C. No proceedings under Chapter XB were ever initiated. A conditional order under Section 133 Cr.P.C has not been passed. In these circumstances, Annexure-C order cannot be reckoned as an order passed by the Sub Divisional Magistrate invoking his powers under the Code of Criminal Procedure. It must be reckoned only as a direction issued by the Revenue Divisional Officer in exercise of his execution functions. Nothing prevents such

executive authority to reconsider and modify Annexure-C order passed by it without following the procedure prescribed under the Code of Criminal Procedure. It cannot be lightly assumed that Annexure-C order is one passed under Chapter XB of Cr.P.C and that therefore the 2nd respondent Revenue Divisional Officer is not entitled to review the said order and proceed further on the basis of the subsequent request made by the 3rd respondent.

3. I have considered the contentions in detail. I find merit in the contentions raised by the learned Public Prosecutor. Annexure-C order, by no stretch of imagination, can be reckoned as an order passed under Chapter XB of Code of Criminal Procedure by the Sub Divisional Magistrate. The order is on the face of it one passed by the Revenue Divisional Officer, an executive authority and is not one passed invoking the powers under the Cr.P.C. In these circumstances, the request of the petitioner to reckon Annexure-C order as one passed under Sections 142, 147, 133 or 138 Cr.P.C cannot succeed. Nothing restrains the Revenue Divisional Officer from considering the representation of the 3rd respondent and the need to modify the instructions issued by him as an executive authority in Annexure-C order. In these circumstances, I am of the opinion that Annexure-D notice issued by the 2nd respondent does not suffer from any vice which would justify invocation of the powers under Section 482 Cr.P.C.

4. In the result, this Crl.M.C is, dismissed.

(R.BASANT, JUDGE)

rtr/-